IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

Criminal Appeal no. 219 of 2005

Sunil Bhagwan Kasabe .....Appellant
vs.
The State of Maharashtra .....Respondents

Mr. Y.s. Shinde, APP for Respondent

Coram:- J.H. BHATIA, J
18th April, 2007.

ORAL JUDGMENT

The appellant who is original accused has preferred this appeal through jail challenging the conviction for the offence punishable under section 304 part I of IPC and sentence of RI for 7 years and fine of Rs. 8,000/- and in default to undergo further RI for one year awarded by the Additional Sessions Judge, Greater Bombay in Sessions Case no. 1253/95 by the judgment and order dt. 24-7-2003.

2. The Prosecution case in brief is that accused Sunil Kasabe and deceased Suresh Khilare used to reside in the same hutment during the year 1995. On 15-2-95 at about 8.00 p.m. Suresh Khilare and PW 2 Arun Sasane were sitting along camp fire (Shekoti) to warm themselves.

About 10 minutes after that, the accused also came there and pushed Suresh Khilare aside to make place for his own sitting. This resulted into altercation and quarrel between the two. Both of them exchanged slaps and grappled with each other. PW 2 Arun intervened and separated them. After that also the accused continued to abuse and threatened Suresh. At that time Arun left the spot to take delivery of his clothes from the tailor at short distance. As the shop was found closed, he immediately came back to the spot and found that several persons had gathered around the spot of incident. Suresh was lying unconscious while accused was running away from the spot. During the short period of his absence, the quarrel had again commenced between the accused and deceased Suresh. The accused had repeatedly bumped his head on the head of Suresh Khilare due to which Suresh fell down. The accused also continued to beat him with fist and kick blows. At that time several women of the locality including PW 1 Meera and PW 3 Vanita were present. They also slapped the accused and intervened. When Suresh collapsed on the ground, the accused ran away. Immediately Arun called a taxi and with the help of his friend Aslam Rasool Shaikh and one Ramesh, he took Suresh to KEM hospital, where after examination the Doctor declared him dead.

3. From the hospital a police constable on duty informed PW 4 P.S.I. Mohd. Yukub on telephone that one injured person was brought to his hospital and that he was declared dead before admission. In view of this P.S.I. Mohd. Yakub, Police Inspector Surve and Senior Police Inspector Ingale rushed to the spot. As many people, who had seen the incident, were present in the hospital, statement of Meera PW 1 was recorded and it was treated as FIR exh. 9, on the basis of which crime no. 81/95 was registered for the offence under section 302 of IPC. However, accused was absconding for long time and finally he came to be arrested on 11-9-95 at Chennai. After completing the Investigation, chargesheet was filed against accused.

4. Charge was framed against accused for offence punishable under section 302 of IPC. He pleaded not guilty. According to him intially deceased Suresh Khilare had forcibly administered country liquor by mixing it in Thums up to him and after that Suresh had also assaulted him with bamboo stick. The accused snatched that bamboo stick from Suresh and threw it away and due to fear he ran away from the spot. According to him he is not aware about the circumstances in which Suresh had died.

5. On behalf of prosecution in all 6 witnesses were examined. The accused examined himself in defence. Several documents are also placed

on record. After hearing the parties the learned trial Court rejected the plea of the accused and on the basis of evidence on record came to conclusion that accused had committed the offence of culpable homicide not amounting to murder, punishable under section 304 part I and accordingly convicted and sentenced him as stated above.

6. At the outset it may be settled that Mr. Prashant Jadhav was appointed by this Court to conduct the appeal on behalf of the accused appellant, who has preferred the appeal through jail and could not engage his own Advocate. Unfortunately, Mr. Jadhav did not turn up when this appeal is called for final hearing. Heard Mr. Shinde, learned APP. With assistance from Mr. Shinde I have carefully perused the prosecution evidence, defence as well as the impugned judgment.

7. About this incident PW 1 Meera, PW 2 Arun and PW 3 Vanita are the important witnesses. The evidence of PW 1 Arun reveals that one Kamalabai lit the camp fire (shekoti) and to warm themselves PW 2 Arun and deceased Suresh Khilare also went there at about 8.00 p.m on 15-2-95. When they were sitting near the fire, the accused also came there and he pushed Suresh aside, apparently to sit himself at that place. This resulted into altercation and quarrel between the accused and Suresh Khilare. They scuffled and slapped each other. Arun intervened and

separated them. When still the accused was abusing and threatening Suresh, Arun went away to a tailor to take delivery of his clothes. Within a few minutes, he came back because the tailor's shop was closed. When he came back, he found Suresh lying unconscious and accused running away from the spot. Evidence of PW 1 Meera and PW 3 Vanita reveals that both of them heard the shouts and they went to the spot to find out what had happened. At that time scuffled was going on between the accused and Suresh Khilare. The accused was bumping his head against the head of Suresh, due to which Suresh collapsed on the ground. Even after that the accused continued to assault him with kicks and fist blows. These and some other ladies intervened and also slapped the accused. Then the accused ran away from the spot. Evidence on record reveal that PW2 Arun, with the help of some of his friends took Suresh to KEM hospital where on examination he was declared dead.

8. PW 5 Dr. Avinash Pujari conducted the post morterm examination on the dead body of Khilare on 16-2-95. He noted following external injuries.

i) contused abrasion on face right side face 3 cm. in front of tragus of right ear and 2.5 cm. away from outer and of right eyebrow, 2.5 cm, muscle deep.

ii) Abrasion of right side face lower part on mandicular border 3.0 cm away from chin 1.0 x 1.0 cm and read.

9. Visera was referred to C.A and PW 5 Avinash Pujari issued the post morterm report but did not give any opinion about the cause of death as C.A report was yet to be received. After receiving the C.A report exh. 23 and 24 he opined that death was due to shock/concussion. The post morterm report reveals that besides the above referred external injuries. The brain was congested and oedematous. Copious froth was found in the lungs. Both the lungs were grossly oedematous and congested. Taking into consideration this evidence it is clear that the deceased had suffered contused abrasion on right side of face and Dr. Avinash Pujari opined that these injuries could be possible due to bumping of head against face of deceased. Even though no fracture of scull or fracture of any ribs etc. was found, the fact that lungs were grossly oedematous and copious froth mixed with blood was oozing from the lungs, it can be believed that these injuries could be possible due to fists and kick blows.

10. Taking into account the oral evidence and post morterm report there remains no doubt that Suresh Khilare died homicidal death.

11. The accused examined himself to prove his defence that liquor was forcibly administered to him by the deceased and that the deceased

had assaulted him with stick and due to fear he had run away. This evidence of the accused does not find support from the other eye witnesses who were present on the spot. There is no material on record to show that deceased had administered any alcohol to him. The learned trial Court rightly noted that if the deceased would have served or administered alcohol to the accused, he himself also would have consumed the same but the C.A. Report clearly ruled out presence of alcohol in his viscera. Therefore, the plea of accused cannot be accepted. The conduct of the accused in absconding from the spot immediately after the incident also shows his pilfer mind. The Prosecution witnesses, particularly PW1 Meera, PW2 Arun and PW3 Vanita could not be shattered in the cross examination. There was no reason for them to depose falsely against the accused. Taking into consideration all the circumstances, his plea as the defence evidence was rightly rejected and it must be held that accused was responsible for the death of deceased Suresh Khilare.

12. It may be noted that there is no material on record to show that there was any previous enimity or quarrel between the accused and Suresh Khilare. Quarrel and scuffle betweeen the two occurred abruptly when the accused pushed Suresh aside so that he himself could sit by the side of the warming fire. Both of them scuffled and slapped each other.

They were separated by Arun but after that again some scuffle took place and the accused bumped his head repeatedly against the head of Suresh due to which he collapsed. Even after that accused gave him fist and blows. Because of this act the Suresh died. However, fact remains that accused did not use any weapons in the said incident nor there was any previous enimity and, therefore, the learned trial Court rightly came to conclusion that accused had no intention to cause death. As the incident occurred abruptly and in the heat of anger upon sudden quarrel the accused assaulted Suresh in view of Exception 4 of Section 300, culpable homicide would not amount to murder. The learned trial Court came to conclusion that accused had caused such bodily injury as is likely to cause death and, therefore, he is liable to be convicted under section 304 (1) of IPC. In view of the repeated blows given by the accused on the head as well as other parts of the body particularly the chest and abdomen, I see no reason to disagree with the trial Court.

13. However, coming to the point of sentence I find that taking into consideration the incident and the fact that the accused was not armed with any weapon nor any weapon was used in committing the offence, the Rigorous imprisonment of 5 years with some fine would meet the ends of justice. Therefore, the appeal may be allowed partly in respect of

sentence.

14. The appeal is partly allowed. The impugned order in respect of the sentence stands modified as follows:

The accused shall undergo Rigorous imprisonment for 5 years and shall pay fine of Rs. 2000/- and in default to pay fine, shall undergo further rigorous imprisonment for 3 months.

(J.H. Bhatia, J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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CRIMINAL APPEAL NO. 219 OF 2005

DATE OF DECISION: 18th April, 2007.

FOR APPROVAL AND SIGNATURE

THE HON'BLE SHRI JUSTICE J.H. BHATIA.

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether this case involves a substantial question of law as to the interpretation of Constitution of India, 1950, or any order made thereunder?

4. Whether it is to be circulated to the Civil Judges/Magistrates/Judicial Officers?

5. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa offices?